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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Darlene Baker,

Plaintiff,

v.

The United States of America ex rel. UNITED  
STATES POSTAL SERVICE, and DOES I  
through X,

Defendants.

Case No. 2:21-cv-00933-JAD-VCF

**Unopposed United States' Motion for  
Exception to Settlement Conference  
Attendance Requirements**

Defendant, the United States of America, moves for an exception to the settlement conference in person attendance requirement in Magistrate Judge Cam Ferenbach's order, dated January 4, 2023. ECF No. 23, pp. 1-2.<sup>1</sup> On January 11, 2023, the undersigned AUSA met and conferred with Plaintiff's counsel, who represented he does not intend to oppose this motion.

**I. Introduction**

This case arises from a trip and fall incident in a United States Post Office parking lot. The Court set this case for a settlement conference on February 22, 2023. ECF No. 23. The order scheduling the settlement conference mandates attendance by a "representative with binding authority to settle this matter up to the full amount of the claim." *Id.* The

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<sup>1</sup> Pursuant to the order, a request for an exception to the mandatory in person requirements must be filed and served at least three (3) weeks prior to the settlement conference. ECF No. 23, p. 2. The mandatory settlement conference is set for February 22, 2023. ECF No. 23. The last date to file and serve the request for an exception is February 1, 2023. This motion is timely.

United States requests that the undersigned AUSAs be allowed to participate in this settlement conference as the representatives for the United States.

## II. Argument

The United States is unlike any other party because it is “the most frequent litigant in federal court.” *United States v. U.S. Dist. Court for N. Mariana Islands*, 694 F.3d 1051, 1058, 1059 (9th Cir. 2012), as amended (Oct. 16, 2012). Because the government handles a very large number of cases, it would be impractical, if not physically impossible, for those with settlement authority to prepare for—and appear at—all settlement conferences. *Id.* at 1059. The Advisory Committee notes to the 1993 amendments to Federal Rule of Civil Procedure 16 acknowledge the unique position that the federal government occupies as a litigant:

Particularly in litigation in which governmental agencies or large amounts of money are involved, there may be no one with on-the-spot settlement authority, and the most that should be expected is access to a person who would have a major role in submitting a recommendation to the body or board with ultimate decision-making responsibility.

Fed. R. Civ. P. 16 advisory committee’s note.

The government delegates settlement authority to select individuals to promote centralized decision-making. *U.S. Dist. Court for N. Mariana Islands*, 694 F.3d at 1059-60. Centralized decision-making promotes three important government objectives. *Id.* First, it allows the government to act consistently in important cases. *Id.* Second, centralized decision-making allows the executive branch to pursue policy goals more effectively by placing ultimate authority in the hands of a few officials. *Id.* Third, by giving authority to high-ranking officials, centralized decision-making better promotes political accountability. *Id.* In light of these principles, the Ninth Circuit has determined that district courts should adopt a “practical approach” in deciding whether to require a government representative with full settlement authority to attend a pre-trial conference. *Id.* at 1061 (quotation omitted). Only as a “last resort” should the district court require an official with full settlement authority to participate in a pre-trial conference in person. *Id.* (quotation omitted).

1           The ultimate authority to settle this case rests with officials at the United States  
2 Postal Service, the United States Attorney's Office for the District of Nevada, and officials  
3 within the Department of Justice, depending on the amount involved, and whether the  
4 client agency and Department of Justice officials agree with the proposed resolution. 28  
5 C.F.R. § 0.168(a). It is not feasible, however, for these officials to attend this settlement  
6 conferences or the many others that are conducted throughout the country. Moreover,  
7 AUSAs routinely participate in settlement conferences in this district as the United States'  
8 sole settlement representatives. Before the settlement conference, the AUSA discusses the  
9 case with the officials with appropriate settlement authority to determine the range of  
10 settlement offers the United States would accept. This approach has not hampered  
11 settlement discussions or impeded settlement in the hundreds of settlement conferences in  
12 which the United States has participated. Hundreds of cases involving the United States  
13 have settled over the years using this approach, including cases involving Plaintiff's counsel  
14 and the undersigned AUSAs. We conferred with Plaintiff's counsel about this  
15 arrangement, and he has informed us he does not intend to oppose this motion.

16           Accordingly, the United States requests that the Court allow AUSAs Troy Flake  
17 and Virginia T. Tomova to participate in the settlement conference as the sole  
18 representatives for the United States. AUSAs Flake and Tomova will brief the appropriate  
19 government officials on the case before the settlement conference to ensure the United  
20 States' meaningful participation.

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1 Should it be necessary, AUSAs Flake and Tomova will provide further  
2 recommendations to appropriate government officials via telephone during the settlement  
3 conference.

4 Respectfully submitted this 31st day of January 2023.

5 JASON M. FRIERSON  
6 United States Attorney

7 /s/ Virginia T. Tomova  
8 VIRGINIA T. TOMOVA  
9 Assistant United States Attorney

10 **IT IS SO ORDERED:**

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13 UNITED STATES MAGISTRATE JUDGE

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15 **DATED:** January 31, 2023  
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